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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,591	04/21/2004	Jules S. Cohen	MSFT-3956/148481.03	5574

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EXAMINER	
JEAN, FRANTZ B	

ART UNIT	PAPER NUMBER
2151	

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/828,591	COHEN ET AL.	
	Examiner	Art Unit	
	Frantz B. Jean	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 April 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *15-25* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *15,21-22 and 25* is/are rejected.

7)☒ Claim(s) *16-20,23 and 24* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *6/21/04,~~4/25/06~~*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

This is a first office action in response to application filed 04/21/2004. Claims 15-25 are presented for examination.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 6/21/04 and 4/25/06 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Specification

The disclosure is objected to because of the following informalities: on page 3 of the disclosure the link "www.msn.com" is written without a bracket. See MPEP form paragraph 7.29.04.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

the claimed invention is directed to non-statutory subject matter. Claim 25 discloses computer-readable medium. The specification, on page 7, second paragraph, defines communication medium as signal such as carrier wave and so on. Therefore, Claim 25 is non-statutory as not being tangibly embodied in a manner so as to be executable.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15-17 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "said first group being in about said first proportion and said second group being in about said second proportion" in claim 15 is a relative term which renders the claim indefinite. The term "in about" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Furthermore, the term "being about equal" recited in claim 16 is a relative term, which renders the claim indefinite.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required

feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 20 recites the broad recitation "throttle value is a number within the range m to n" and the claim also recites "wherein said range is 0 to n-1" which is the narrower statement of the range/limitation.

Claim 22 recites the limitation " the determination. There is insufficient antecedent basis for this limitation in the claim.

During patent examination, the following pending claims have been "given their broadest reasonable interpretation consistent with the specification." In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim15 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 11296349 (hereinafter "349").

As per claim 15, "349" teaches a method of deploying a new software feature to a plurality of users, said method comprising the acts of:; selecting a first group of said plurality of users, the number of users in said first group being in about said

first proportion to the number of said plurality of users (paragraph 0003 discusses increase of a number of node, which is an indication that there are many groups of nodes); providing said feature to said first group (par 0004-0006 discuss providing software's installation); the step of setting a throttle value to a first proportion and increasing said throttle value from said first proportion to a second proportion and selecting a second group of said plurality of users, the number of users in said second group being in about said second proportion to the number of said plurality of users, wherein all users in said first group are included in said second group (paragraphs 0003-0004 discuss installation time will increase if there is an increase in the number of nodes, which implies that a value was adjusted in order to increase the nodes that constitute another group and/or selection of another group of nodes); and providing said feature to said second group (after each increase in nodes an installation must be completed; and the time of the installation is also increase, see par 0003-0004).

Claim 25 is directed to a computer-readable medium, which contains the same limitations as discussed in claim 15. Therefore, it is rejected under the same rationale.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over "349" in view of Hendrickson et al. (hereinafter, "Hendrickson") US patent Number 6,625,622. As per claim 21, "349" does not explicitly teach a change in the location of specified data, and wherein the acts of providing the feature comprise copying data from one location to another location. This feature is well known in the art of software update and deployment as evidenced by Hendrickson (abstract; col. 4 lines 40-60). It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined Hendrickson's data transfer with "349" system to facilitate software installation or deployment in "349". It would have been apparent to one ordinary skill in the art at the time of the invention to incorporate data migration feature into "349" because it would have protected "349" system by eliminating bug propagation and data corruption during software installation/deployment process.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over "349".

As per claim 22, "349" fails to disclose the act of: delaying the determination of whether a given user falls into said first or second group until a contact is initiated by the given user. It would have been apparent to one of ordinary skill in the art at the time of the invention to delay the determination of finding out if a user falls into a certain particular group until contact is initiated because different users may have different needs. Therefore, by initiating contact, the user's identifier will help in deciding the group certain user will most likely belong. One skill artisan would have incorporated this feature into "349" to facilitate classification or users.

Allowable Subject Matter

Claims 16-20 and 23-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz B. Jean whose telephone number is 571-272-3937. The examiner can normally be reached on 8:30-6:00 M-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571 272 3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frantz Jean

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FRANTZ B. JEAN
PRIMARY EXAMINER